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No. 79-116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

HALLEY I. THOMAS, *Petitioner*,

v.

WASHINGTON GAS LIGHT COMPANY, *Respondent*.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

In a case where the law of the forum of an employee's residency and of the employment contract foreclosed workmen's compensation benefits if an award were available under the law of the state wherein the claim arose, the following question is presented:

> Under the full faith and credit clause of the Constitution of the United States, does not an award of compensation under the Virginia Workmen's Compensation law bar a further recovery for the same injury under the District of Columbia Workmen's Compensation law?

COUNTERSTATEMENT OF THE CASE

Petitioner Halley I. Thomas was employed by Respondent Washington Gas Light Company (WGL) in 1970 (App. 60)* As a result of an incident occurring on January 22, 1971, in Arlington, Virginia, and outside the District of Columbia (App. 108-109), Mr. Thomas began receiving social security benefits (App. 76). He also received workmen's compensation pursuant to an "Industrial Commission of Virginia Memorandum of Agreement as to Payment of Compensation" (App. 108). Near the bottom of that document appear these words (App. 108):

> "The terms of this agreement under the above facts are as follows:—
>
> That the said Halley I. Thomas shall receive compensation at the rate of $—— and that said compensation shall be payable . . . until terminated in accordance with the provisions of the Workmen's Compensation Law of the State of Virginia ——"

As required by the Industrial Commission, the signatures of Petitioner, WGL's representative and two witnesses appear immediately thereafter. The Industrial Commission of Virginia approved the Agreement and entered an Award (App. 109).[1] No effort was made

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* References are to the appendix to the briefs filed in the U.S. Court of Appeals for the Fourth Circuit (Record No. 78-1261). A copy of that appendix is lodged with the Clerk for the convenience of the Court.

[1] The manner by which Petitioner secured his award in Virginia does not "set apart" his case from other cases. To the contrary, this case is representative of approximately 95% of all claims for workmen's compensation in the various states. *Dillard* v. *Virginia Industrial Commission*, 416 U.S. 783 at 785 n. 2 (1974).

In this context, it is fair to conclude that Petitioner overstates his case by implying that it arises out of jurisprudential confusion and involves difficult and nagging constitutional questions (Petition at 5, 15, 17). None exists.

by Mr. Thomas to have the Agreement or his Award amended, rescinded, altered or voided.[2] Rather, a claim was filed more than three years later for benefits under the laws of the District of Columbia (App. 106, 115). WGL opposed the grant of such additional benefits and administrative proceedings ensued (App. 48-105).[3]

Mr. Thomas and his wife, a "segregation specialist" for a casualty insurance company, were witnesses. Neither made any claim of failure to understand the Agreement or the Award. Under questioning by counsel of his choice, Mr. Thomas acknowledged receipt of payments and the Agreement and Award were received into evidence (App. 96).

The Administrative Law Judge awarded compensation. The Benefits Review Board of the United States Department of Labor affirmed, stating (App. 7):[4]

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[2] Note that the attorney for Mr. Thomas claimed to have represented him since July 1973 (App. 29).

[3] Prior to issuance of the Award, Petitioner had a right to an adjudicatory hearing before the Industrial Commission (Va. Code § 65.1-94 et seq.). Such right survives the Award.

An award may be set aside upon a showing of unauthorized acts of legal counsel, "fraud, imposition and mistake." No chronological barriers for relief are imposed. *Harris* v. *Diamond Const. Co.*, 184 Va. 711, 36 S.E. 2d 573 at 577 (1946). No application for this relief was made by Mr. Thomas and it does not become him to now remark that his Award had been merely "rubber stamped" by the Industrial Commission and to contend that his Award is somehow less than final (Petition at 8).

[4] The District of Columbia statute makes the Longshoremen's and Harbor Workers' Compensation Act applicable in the District of Columbia. Both statutes are administered by the U.S. Depart-

> "In Pettus v. American Airlines, Inc., 6 BRBS 461, BRB No. 77-115 (Aug. 22, 1977), we specifically held that the Virginia statute contains no explicit prohibition which would preclude recovery (sic) injuries under the District of Columbia Act."

The *Pettus* case not only preceded the instant case at the administrative level, but also on judicial review. On September 26, 1978, the U.S. Court of Appeals for the Fourth Circuit, which later also decided the instant case, vacated the award of compensation in *Pettus,* stating (587 F.2d 627 at 629-630 (4th Cir. (1978), *cert. denied,* —— U.S. —— (No. 78-1739, October 1, 1979)):

> "[C]laimant urges that he still had the right to proceed under the District of Columbia law for compensation benefits, with only the obligation to credit thereon any award he procurred in Virginia. Precedent of last resort refutes this contention."

Then, the court said (at 631):

> "Turning to the Virginia statute, we find it as exclusive of a second proceeding as the Chief Justice

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ment of Labor (20 CFR 701.102). Accordingly, the District of Columbia statute is administered by District No. 40 of the Office of Workmen's Compensation Programs, U.S. Department of Labor (20 CFR 704.201).

In 1971, recovery under the Longshoremen's and Harbor Workers Compensation Act (33 U.S.C. § 901 et seq.) and, therefore, under the District of Columbia Workmen's Compensation Act (D.C. Code § 36-501 et seq.) was *expressly* prohibited by Section 903(a) in any case where a remedy was available under state law. A statute of this type "delimits local coverage generally and leaves nothing to the claimant's election . . . . This . . . is not an election . . . between coexisting rights, but a definition in advance of the basic scope of the local statute." Larson, Workmen's Compensation, *Duke Law Journal,* Vol. 1971, p. 1050 n. 46.

> in *Magnolia* found the Texas law. Under the statute, he noted an award "is explicitly made by statute in lieu of any other recovery for injury to the employee.' 320 US at 435. . . .

And the court noted that (at 631-32):

> "In verification of our construction of this section, the Virginia Law Review observes: 'Under the Workmen's Compensation Act, any collateral action the employee might have against his employer is barred unless the employee expressly waives coverage of the Act's provisions.' A footnote thereto adds: 'Employees may waive coverage of the Act . . . but if they do not, their right to compensation excludes any other claims they may have against the employer. . . .' " (Footnote omitted.)

In the instant case, the same court below noted that Mr. Thomas "had sought and obtained" his award from the Industrial Commission of Virginia and found that his case involved "an identical factual premise and corresponding question of law. . ." with *Pettus* v. *American Airlines* (Petitioner's Appendix A at 2a).

The award of compensation was vacated in *Pettus* and, upon petition to this Court, the following question was presented (No. 78-1739; Petition at 2):

> "Whether a final decision of the Industrial Commission of the state of Virginia bars a subsequent claim for worker's compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act, as it is made applicable to the District of Columbia, under the reasoning of this Court in Industrial Commission v. McCartin, 330 U.S. 622 (1947)."

In the instant case, the question presented by Petitioner is framed (Petition at 2):

> "Whether the constitutional obligation to give full faith and credit to the Virginia Workmen's Compensation Act, including its exclusive remedy provision, Va. Code § 65.1-40 (1975 Repl. Vol.), precluded an award of compensation benefits by the District of Columbia following approval by the Industrial Commission of Virginia of a voluntary workmen's compensation agreement."

Note that the issues are the same.[5] Certiorari was denied the *Pettus* case on October 1, 1979.

REASONS FOR DENYING THE PETITION

Having obtained an Award under the Virginia Workmen's Compensation Act, Petitioner is barred by the express words of the Virginia Act and precluded by the doctrines of res judicata and collateral estoppel from obtaining a subsequent award in Virginia. Petitioner is likewise precluded from obtaining a subsequent award in the District of Columbia, not only for the same reasons but because the express terms of the applicable District of Columbia Workmen's Compensation Act also foreclose recovery.

The Fourth Circuit has correctly interpreted and applied the Virginia statutes and has correctly applied the principles of full faith and credit articulated by this Court in *Magnolia Petroleum Co.* v. *Hunt,* 320 U.S. 430 (1943), and *Industrial Commission of Wisconsin* v. *McCartin,* 330 U.S. 622 (1947). See also *Pettus* v. *American Airlines, Inc.,* 587 F.2d 627 (4th Cir. 1978), *cert. denied,* —— U.S. —— (No. 78-1739, October 1, 1979).

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[5] Halley I. Thomas and George Pettus have the same counsel.

ARGUMENT

I

The Petition Is Without Justification Because The Fourth Circuit Faithfully Adhered To The Directives Established By This Court In The Magnolia and McCartin Cases

Petitioner describes the ruling of this Court in *Magnolia Petroleum Co.* v. *Hunt,* 320 U.S. 430 (1943), as follows (Petition at 6):

> "[T]his Court concluded that the Texas exclusive remedy provision foreclosed any claim under the Louisiana statute."

In *Magnolia,* the Court stated (320 U.S. at 432):

> "The question for decision is whether, under the full faith and credit clause, Art. IV, § 1 of the Constitution of the United States, an award of compensation for personal injury under the Texas Workmen's Compensation Law . . . bars a further recovery of compensation for the same injury under the Louisiana Workmen's Compensation Law . . . ."

The facts in *Magnolia* were that an employee was injured while working in Texas and received workmen's compensation benefits in Texas. He then brought a proceeding in the Louisiana District Court to recover compensation under Louisiana law. On review, this Court held that constitutional protections based on full faith and credit extend to awards of workmen's compensation (320 U.S. at 438). The Court concluded (id. at 442):

> "The remedies afforded to respondent by the Texas and Louisiana Workmen's Compensation Laws are likewise rendered mutually exclusive by the Texas judgment and the full faith and credit

clause. The Texas award, being a *bar to any further recovery* of compensation for respondent's injury, is, by virtue of the full faith and credit clause, exclusive of his remedy under the Louisiana Act" (emphasis added).

* * * * *

"[P]etitioner . . . is [not] required to provide further payments to respondent, contrary to the terms of the Texas *award,* which, if the full faith and credit clause is to be given any effect, *was a conclusive determination between the parties* that petitioner should be liable for no more than the amount of the Texas award" (emphasis added).

The reasons were stated (id. at 439):

"These consequences flow from the clear purpose of the full faith and credit clause to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be *as conclusive* of the rights of the parties in every other court *as in* that *where the judgment was rendered,* so that a cause of action merged in a judgment in one state is likewise merged in every other. The full faith and credit clause like the commerce clause thus became a nationally unifying force" (emphasis added).

The Fourth Circuit adhered to *Magnolia.* In granting WGL's motion for summary reversal, the court stated (Petitioner's App. A at 2a):

"Upon an identical factual premise and corresponding questions of law, we set aside a similar order of the BRB in Pettus v. American Airlines, Inc., 587 F.2d 627 (4th Cir. 1978). Consequently, we perceive no reason to hear argument on the appeal."

In *Pettus,* the Fourth Circuit compared the Texas and Virginia workmen's compensation statutes and held (587 F.2d at 631):

"Turning to the Virginia statute, we find it as exclusive of a second proceeding as the Chief Justice in *Magnolia* found the Texas law."

The exclusive nature of both statutes was then detailed. Under the Texas statute, an award "is explicitly made by statute in lieu of any other recovery for injury to the employee." Comparing this to the Virginia statute, the Fourth Circuit found (id. at 631):

"How precisely the Virginia law fits into the Texas mold appears at once upon reading Virginia's Workmen's Compensation law:

"§ 65.1-40. Employee's rights under the Act exclude all others. The rights and remedies herein granted to an employee . . . shall exclude all other rights and remedies of such employee, . . . *at common law or otherwise,* . . . (Va. Code Ann. § 65.1-40 (Rep. Vol. 1973). (Accent added.)"

As in the *Pettus* case, Petitioner is attempting to toss up his contentions so as to require this Court to choose between *Magnolia* and *Industrial Commission* v. *McCartin,* 330 U.S. 622 (1947). There, the employee and the employer were residents of Illinois and the contract of employment was made in Illinois. The employee commuted daily to and from his place of work in Wisconsin. Being injured in Wisconsin, he filed in that state and about six weeks later also filed in Illinois. Some four months later a settlement contract was made between the employer and the employee which stated that: "This settlement does not affect any rights that

applicant may have under the Workmen's Compensation Act of the State of Wisconsin" (at 629). On review, this Court noted that in *Magnolia* the award—

> "was made explicitly in lieu of any other recovery for injury to the employee, precluding even a recovery under the laws of another state. . . . And since the Texas award had the degree of finality contemplated by the full faith and credit clause, it was held that Louisiana was constitutionally forbidden from entering a subsequent award under its statute" (330 U.S. at 626-27).

The Court concluded that these circumstances did not exist in *McCartin,* the Illinois award being different in its nature and effect from the Texas award in *Magnolia* (id. at 627). Of "decisive significance" was the "fact" that an administrator of the Illinois workmen's compensation statute had permitted the settlement contract to become "part of the Illinois award" (id. at 630). Hence, the Illinois administrator's ruling permitted a second award in Wisconsin. In these circumstances, *Magnolia* was deemed not to control (id. at 630).

The Fourth Circuit has construed the Virginia statute. In so doing, it has followed the principles set forth by this Court in *Magnolia* and *McCartin.* As in *Magnolia,* a second recovery is foreclosed.

II

There Is No Conflict Among States or Circuits Regarding The Application Of The Virginia Workmen's Compensation Act

Petitioner's claim is based solely on an interpretation of Virginia law. No case is cited showing a conflict on the proper interpretation of that law, and indeed, no such conflict exists. Conflicts which may exist with respect to application of the workmen's compensation

statutes of other states need not be here resolved. Hence, there is no conflict among states or federal circuits in this case.

As discussed in Argument I, the Fourth Circuit has correctly found the Virginia Workmen's Compensation Act to provide Petitioner with an exclusive remedy. There is no other judicial decision in the state or federal courts which conflicts with that finding and only two other court decisions involving the Virginia Workmen's Compensation Act need be here considered: *Pettus* v. *American Airlines,* 587 F.2d 627 (4th Cir. 1978), *cert. denied,* —— U.S. —— (No. 78-1739, October 1, 1979); and *Newport News Shipbuilding & Dry Dock Co.* v. *Director, OWCP,* 583 F.2d 1273 (4th Cir. 1978), *cert. denied,* —— U.S. —— (No. 78-1012, February 26, 1979).

In *Newport News* (decided September 21, 1978), the Fourth Circuit found that denial of a workmen's compensation claim by the Virginia Commission did not bar receipt of an award under the federal Longshoremen's and Harbor Workers' Compensation Act. The employer there argued that denial of the claim under state law excluded an award under the federal statute. This contention was rejected on a finding of no "constitutional objection to the pursuit of both state and federal remedies" (583 F.2d at 1277).

In *Pettus* (decided September 26, 1978), the Virginia Act was interpreted to bar a subsequent award under the District of Columbia Act. The District of Columbia has adopted the Longshoremen's and Harbor Worker's Compensation Act as the local workmen's compensation statute. This did not create the same federal-state issue that existed in *Newport News* because Mr. Pettus was pursuing a subsequent remedy

under local law (in the District of Columbia), not a separate federal remedy.

The Fourth Circuit decision in *Pettus* is the most recent and strongest authority interpreting the exclusive nature of the Virginia Workmen's Compensation Act. There is no existing conflict as to the correctness of the *Pettus* decision and there is no need for this Court to speculate on possible conflicts involving the laws of other states.

III

Petitioner Is Not Entitled To Recover Benefits Under The Terms Of The Applicable District of Columbia Workmen's Compensation Act

The District of Columbia has adopted (D.C. Code Ann. § 36-501 (1973 & Supp. IV 1977)) the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. § 901 *et seq.* (1970 & 1978)) as the workmen's compensation law in the District of Columbia. Section 903(c), as it applied in 1971 and to the facts of the instant case, barred relief because workmen's compensation benefits had been received under a Virginia award. Under Section 903, compensation was not payable if recovery for the disability is available under another state law:

> "(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but *only* if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) *and if recovery for the disability* or death through workmen's compensation proceedings *may not validly be provided by State law*" (emphasis added).

On October 27, 1972, Section 903(a) was amended to omit the exclusion relating to remedies available under

state law, effective November 27, 1972. At the time of Petitioner's injury on January 22, 1971, however, the exclusion under Section 903(a) was in force and effect.

The Virginia award conclusively established that a remedy was available under state law and that the claim was no longer recognizable under either LHWCA or under the District of Columbia Code. Although the ruling of the court below is premised only upon the statutes of Virginia, those of the District of Columbia were noted by WGL in argument and cannot be ignored by Petitioner in this Court. Thus, Petitioner's sole remedy in January 1971 was in Virginia, WGL was under no obligation to file anything in the District of Columbia, the one-year statute of limitations was not tolled and his 1974 "supplemental" claim must fail (33 U.S.C. §§ 912(d), 913(a), 930(f)).

CONCLUSION

Wherefore, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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